AMENDMENTS TO THE DRAWINGS

The attached two sheets of drawings includes changes to Fig. 4B, 4C, 8A, 8B and 8C. These sheets replaces the original sheets including Fig. 4A, 4B, 4C, 8A, 8B and 8C. Fig. 4B, 4C, 8A, 8B and 8C have been amended to conform more clearly with its corresponding detailed description.

Attachments: Replacement Drawing Sheets

REMARKS

Claims 1, 3-6, 8, 9, 11-15, 18, 21 and 26 are pending in the application.

Claims 1, 3-6, 8, 9, and 21 have been rejected.

Claims 3, 4, 5, 6, 9, 14, and 15 have been amended.

Appreciation is expressed for the indicated allowability of claims 11-15 and 26.

Informalities

Claims 3-5, 14, and 15 stand objected to because of informalities. For the sake of clarity and not for reasons related to patentability, Applicants have amended these claims in accordance with Examiner's suggestions. Applicants respectfully submit that amended claims 3-5, 14, and 15 are in condition for allowance and respectfully request notice to that effect.

Rejection of Claims under 35 U.S.C. § 112

Claims 1, 3-6, 8-9 and 21 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.. Applicants have amended claim 9 in accordance with Examiner's suggestion to clarify that generating a restart message is in response to the detection of a failure. Applicants respectfully submit that amended claim 9 is in condition for allowance and respectfully request notice to that effect.

With regard to claim 1, Applicants respectfully traverse this rejection. The Office Action asserts that there is no relationship between the first modified message in line 11 and the second message in line 23, and that claim 1 is vague and indefinite as a result. Applicants respectfully disagree, and also respectfully submit that the Office Action fails to properly establish the necessity of a direct functional relationship between these two claim elements.

Applicants presume claim 1 is rejected under MPEP § 2172.01. If claim 1 is rejected under some other rationale, Applicants respectfully request citation to the section of the MPEP or caselaw. MPEP 2172.01 provides: "[A] claim which fails to interrelate

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essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 U.S.C. 112, second paragraph, for failure to point out and distinctly claim the invention." However, § 2172.01 goes on to state: "[I]t is not essential to a patentable combination that there be interdependency between the elements of the claimed device or that all the elements operate concurrently toward the desired result." *Ex parte Nolden*, 149 USPQ 378, 380 (Bd. Pat. App. 1965). Still further, § 2172.01 of the MPEP provides: "A claim does not necessarily fail to comply with 35 U.S.C. 112, second paragraph where the various elements do not function simultaneously, are not directly functionally related, do not directly intercooperate, and/or serve independent purposes." *Ex parte Huber*, 148 USPQ 447, 448-49 (Bd. Pat. App. 1965).

As previously argued by Applicants, the first modified message and second message are related at least in that they both exist in the first network switch. Applicants respectfully submit that no further relationship between the two is essential. In response to the Office Action's statement (on page 3) that it is unclear why the two messages are being claimed together, Applicants respectfully submit that the reason the first modified message and the second message are claimed together is that they define one embodiment, though others may exist.

Applicants further submit that claim 1 is not vague, but is clear and precise within the meaning of 35 U.S.C. 112, 2nd paragraph. The test for vagueness is whether it would be possible for one of ordinary skill in the art to determine whether or not a given technology infringes. *See*, MPEP 2173.02, which provides "In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph, by providing clear warning to others as to what constitutes infringement of the patent." Applicants respectfully submit that in this case, it would be exceedingly easy to understand whether a given technology would infringe. To wit, if both a first modified message and a second message existed in the first switch as claimed, then a technology would infringe. Otherwise the technology would not.

Therefore, Applicants respectfully submit that claim 1 is fully compliant with the requirements of 35 U.S.C 112, second paragraph. Applicants respectfully submit that

claim 21 is likewise compliant with the requirements of 35 U.S.C 112, second paragraph, for similar reasons. Accordingly, Applicants respectfully submit that claims 1 and 21 are in condition for allowance, as are claims 3-6 and 8, at least by virtue depending from allowable claims, and respectfully request notice to that effect.

CONCLUSION

In view of the amendments and remarks set forth herein, the application and the claims therein are believed to be in condition for allowance without any further examination and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is invited to telephone the undersigned at 512-439-5092.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

Respectfully submitted,

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